

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY



MARTIN LUTHER KING JR. FEDERAL BLDG. & U.S. COURTHOUSE  
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WILLIAM J. MARTINI  
JUDGE

LETTER OPINION

March 24, 2004

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*Attorney for Plaintiff*

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*Defendants Pro Se*

**Re: L-3 Space and Navigation v. Rafik Abnous, et al.,  
Civil Action No. 05-CV-98 (WJM)**

Dear Litigants:

This matter comes before the Court on Defendants *Pro Se*'s objections to Magistrate Judge Ronald J. Hedges's report and recommendation, which recommended granting Plaintiff's motion for default judgment. For the following reasons, the Court shall grant Defendants *Pro Se*'s objections and deny Plaintiff's motion for default judgment.

**Background**

Plaintiff filed a multi-count complaint against Defendants *Pro Se* on January 1, 2005. On February 23, 2005, Defendants *Pro Se* filed a motion to dismiss Plaintiff's complaint. This Court granted in part, and denied in part, the motion in a letter opinion dated June 24, 2005. Defendants *Pro Se* never responded to the remaining counts of the complaint. Instead, on July 7, 2005, they filed a motion to transfer the case to the Central District of California. On that day, Defendants *Pro Se* also sent a letter to Judge Hedges requesting that he postpone the issuance of a scheduling order until a ruling was made on the motion to transfer.

On September 7, 2005, Judge Hedges denied the motion to transfer. Then, on October 3, 2005, Plaintiff filed a motion for default judgment based on Defendants *Pro Se*'s failure to answer the complaint within 10 days. On January 6, 2006, Judge Hedges issued a report and recommendation, which advised this Court to grant default judgment.

### **Discussion**

Federal Rule of Civil Procedure 12(a)(4)(A) requires a defendant to answer a complaint within 10 days of a court's denial of a motion to dismiss. *See* Fed. R. Civ. P. 12(a)(4)(A). Since Defendants *Pro Se* never answered the remaining counts of the complaint within 10 days, they were in default. The record shows, however, that Defendants *Pro Se* have been in constant contact with the court and have, generally, filed their papers on time. Furthermore, since Defendants *Pro Se* are proceeding "*pro se*," the Court must give them the benefit of the doubt. Therefore, we will not saddle Defendants *Pro Se* with a default judgment, which could potentially amount to \$670,000.00, for failing to respond within 10 days of our letter opinion. Accordingly, Judge Hedges's report and recommendation shall be rejected and Plaintiff's motion for default judgment denied. Defendants *Pro Se* shall have 10 days from the date of the accompanying order to respond to the remaining counts in the complaint.

On a side note, it has been brought to our attention by Judge Hedges, in his report and recommendation, that Defendant may be enlisting the aid of a California attorney to assist in preparing their submissions. The Court is troubled by this conduct. Should Defendants continue to proceed in such a fashion, they will no longer be entitled to *pro se* status. Furthermore, the Court may impose sanctions against Defendants for misrepresenting their status to the Court.

### **Conclusion**

Defendants *Pro Se*'s objections to Judge Hedges's report and recommendation are granted, and Plaintiff's motion for default judgment is denied. An appropriate order accompanies this letter opinion.

s/ William J. Martini  
**William J. Martini, U.S.D.J.**

cc: The Honorable Ronald J. Hedges, U.S.M.J.